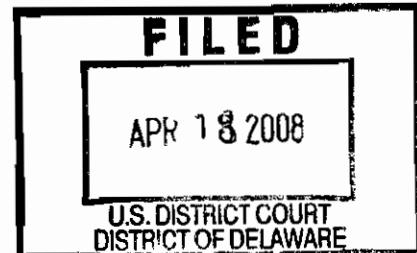


**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Deshawn D. Darling, Petitioner,
v.
Thomas Carroll, Respondent.
Correctional Medical Service
Deputy Warden David Pierce
Respondent.

Civ. Act. No. 007-683 GMS

Jury Trial Demanded



Response Motion to Defendants Motion to Dismiss

Defendants Correctional Medical Services, Inc ("CMS") filed a Motion to Dismiss Plaintiffs claim for failure to file an affidavit of merit as required by 18 Del.C. 6853(a)(1). Under Delaware law, healthcare negligence lawsuits cannot be filed unless the complaint is accompanied by an affidavit of merit signed by an expert witness stating that there are reasonable grounds to believe there has been healthcare medical negligence, 18 Del.C. 6853 (a)(1). Defendant argues that this court should dismiss

Plaintiff's complaint because it was not accompanied by an affidavit of merit. However, this is a federal Court and Plaintiff's claims under 42 U.S.C. 1983 are based on violations of the United States Constitution. Consequently, 18 Del.C. 6853 (a)(1) does not apply to Plaintiff's complaint. Plaintiff prays that the Court reject Defendants' Motion to Dismiss for failure to submit an affidavit of merit. (citing McCray v. First State Medical System 379 F. Supp. 2d Fn. (1) (D. Del. 2005))

Dated: 4-16-08

Destraene D. Darby Jr.

Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

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Civ. Act. No. 007-683 GMS
Jury Trial Demanded

ORDER

This _____ day of _____, 200____

IT IS HEREBY ORDERED that

United States District Judge/Magistrate

Certificate of Service

I, Deshawn D. Darling, hereby certify that I have served a true
And correct cop(ies) of the attached: Motion to Response to Defendants
Motion to Dismiss upon the following
parties/person (s):

TO: James E. Donee, Esq.
Balick & Balick
711 King St.
Wilmington, DE, 19801

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United
States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 16 day of April, 2008

Deshawn D. Darling, Jr.

